

### **REMARKS / DISCUSSION OF ISSUES**

Claims 1, 3- 13 and 15-23 are pending in the application.

Unless indicated otherwise, claims are amended for non-statutory reasons: to correct one or more informalities, remove figure label number(s), and/or to replace European-style claim phraseology with American-style claim language.

#### **I. Objection to the Drawings**

The Examiner objects to Fig. 10 for lacking text labels in certain block elements. The Examiner indicates that further number designations in Figs. 1-9 do not include text labels with sufficient detail. Applicant disagrees. Figs. 1-9 include, inter alia, representations of physical address space and graphs. These representations are indicative of the physical address space and other elements and require no further text.

Approval of the changes to Fig. 10 and withdrawal of all objections to the drawings is earnestly solicited.

#### **II. Rejection under 35 U.S.C. § 112, ¶2**

The Examiner rejects claims 1-22 under 35 U.S.C. § 112, ¶2 due to the inclusion of the terms 'such as', 'preferably' and 'like.' The undersigned has amended the claims to delete each instance of these terms. Accordingly, it is respectfully submitted that this rejection is rendered moot in view of the present response. Therefore, Applicant respectfully requests that the rejection of claims 1-22 under U.S.C. § 112, ¶2 be withdrawn.

#### **III. Rejection under 35 U.S.C. § 102**

The Examiner rejects claims 1-3, 5, 9, 12-15, 17 and 21 under 35 U.S.C. § 102 (e) as being anticipated by *Kimura, et al.* (U.S. Patent 6,501,905). For at least

the reasons set forth herein, it is respectfully submitted that this rejection is improper and should be withdrawn.

A proper rejection under 35 U.S.C. § 102(e) requires that all of the claimed elements be found in the applied art. If a single claimed element is not found in the applied art, a prima facie case of anticipation cannot be properly established.

**A. Claims 1 and 13 and the claims that depend therefrom are patentable over Kimura, et al.**

Claim 1, as amended is drawn to a method of recording a sequence of ordered real-time information signals. The method features: *allocating allocation extents of at least one fragment, with fragments within an allocation extent allocated contiguously...and allocating allocation extents representing neighboring real time information signals in the ordered sequence of information signals spatially in each other neighborhood on the disc recording medium.*

In an embodiment, the extents of at least one fragment are allocated in each neighborhood, and in sequence. In a specific embodiment, the sequence corresponds to the sequence of reproducing. Notably, the fragments of PA1, PB1, PA2, PB2, etc. are allocated in each neighborhood and in sequence. (See Fig. 5A and the supporting description at page 10, line 19 through page 11, line 22.)

By contrast, the reference to *Kimura, et al.* discloses in Table 13, which relates to a logic volume information header. The header includes the logic sector size, which designates the size of the logic sectors of the logical volume. However, the header disclosed in *Kimura, et al.* only describes the number of partitions constituting the logical volume; does not relate to the physical address space as do the allocation extents of claim 1; and do not disclose that the allocation extents are allocated in the ***ordered sequence of information signals spatially in each neighborhood*** on the disc recording medium. In fact neither the sequence nor the allocation of the logic sectors in Table 13 is disclosed.

For at least the reasons set forth above, it is respectfully submitted that the reference to *Kimura, et al.* lacks at least the disclosure of one of the features of claim

1. As such, a prima facie case of anticipation of claim 1 based on *Kimura, et al.* cannot properly be made. Therefore, it is respectfully submitted that claim 1 and the claims that depend therefrom are patentable over the applied art. Allowance is earnestly solicited.

Furthermore, claim 13, which is drawn to an apparatus adapted to record a sequence of real-time information signals, includes a feature similar to that of claim 1 noted above. Therefore, by similar reasoning it is respectfully submitted that reference to *Kimura, et al.* lacks at least the disclosure of one of the features of claim 13. As such, a prima facie case of anticipation of claim 13 based on *Kimura, et al.* cannot properly be made. Therefore, it is respectfully submitted that claim 13 and the claims that depend therefrom are patentable over the applied art. Allowance is earnestly solicited.

**B. The Office Action fails to comply with MPEP § 706**

Claims 3, 5, 9, 12-15, 21 were rejected in view of *Kimura, et al.* It is respectfully submitted that the rejection of these claims is improper and should be withdrawn for at least the reasons set forth below.

MPEP § 706 states, inter alia, "The **goal of examination is to clearly articulate any rejection early in the prosecution process** so that the applicant has the opportunity to provide evidence of patentability and otherwise reply completely at the earliest opportunity."

In the rejection of claim 3, the Examiner asserts that the reference to *Kimura, et al.* discloses certain features, but provides no direct citation of the material in the applied reference. In the rejection of the remaining claims noted above, the Examiner asserts that these claims "...are deemed analyzed and discussed with respect to the claims and passages above." Applicant asserts that the rejection of claims 1 and 2 do not provide the requisite basis or support for a proper rejection of each limitation of dependent claims 3, 5, 9, 12-15, 21. Furthermore, Applicant asserts that the Examiner has failed to clearly articulate a rejection as to these claims.

Respectfully, Applicant has paid the appropriate claim fees for this application. Applicant is entitled to a full and complete examination of each and every pending claim, including all features recited therein. If the Examiner cannot cite prior art taken alone or in proper combination, which would have produced the methods and apparati of claims 3, 5, 9, 12-15, 21, then it is respectfully submitted that the Applicant is entitled to an allowance of their claims as a matter of law. Accordingly, Thus, the onus remains with the Examiner to articulate a rejection within the tenets of the referenced section of the MPEP in a subsequent non-final Examiner Action citing the requisite features of these claims in the prior art, or to allow claims 3, 5, 9, 12-15, 21.

**C. The rejection of claims 1-23 under 35 U.S.C. § 102(a) is improper**

The Examiner rejects claims 1-23 under 35 U.S.C. § 102(a) indicating that FR 2787962A was cited as a 'P, X' reference in the search report of the corresponding foreign application of the present application. The Examiner then requests that a certified translation of the priority document of the present application be provided to, presumably, antedate the French reference. Such a rejection is wholly improper.

It is respectfully submitted that a proper rejection for anticipation requires that all of the claimed elements be found in the applied art. If a single claimed element is not found in the applied art, a prima facie case of anticipation cannot be properly established. Respectfully, the Examiner has failed to provide any proof whatsoever that any of the elements of claims 1-23 are found in the reference relied upon. To this end, citation of claimed features in the applied reference is not provided and the assumption that the classification of a reference in a foreign search report is dispositive of patentability under U.S. laws governing anticipation is wholly improper.

For at least the reasons set forth above it is respectfully submitted that the present rejection is improper and should be withdrawn.

**III. Rejection under 35 U.S.C. § 103**

The Examiner rejects claims 6-8, 10, 11, 18-20, 22-23 as being unpatentable over *Kimura, et al.* For at least the reasons set forth below, it is respectfully submitted that this rejection is improper and should be withdrawn.

In the rejections of claims 6 and 18, the Examiner asserts that the reference to *Kimura, et al.* '...meets the limitations as claimed but fails to mention disclose the constant angular velocity during recording.' The Examiner then takes Official Notice of this feature. First, it is submitted that the Examiner has failed to articulate a rejection per MPEP § 706 and has failed to provide suitable citation of each feature of claims 6 and 18 in the applied art. As such, for reasons similar to those set forth in II.B. above, this rejection is improper and should be withdrawn. Moreover, Official Notice is necessarily based on first-hand knowledge of the subject matter of the Notice. Applicants respectfully request an affidavit as prescribed under 37 C.F.R. §1.104(d)(2) from the Examiner or the rejection should be withdrawn.

In the rejection of the remaining claims of the presently discussed rejection the Examiner either notes that the applied reference is lacking features of the claims and takes Official Notice as to those features; or deems the claims analyzed and discussed and notes certain features lacking in the reference and takes Official Notice as to these features.

In response thereto, Applicant respectfully submits that the initial burden of providing a *prima facie* case of obviousness has not been met. To wit, the rejections fail to provide suitable citation in the applied art of the disclosure of each feature of the rejected claims. Moreover, in each instance that Official Notice is taken in the rejection of claims 7,8, 10, 11,19-23, Applicant respectfully requests an affidavit prescribed under 37 C.F.R. §1.104(d)(2) or that the rejections be withdrawn.

Again, Applicant respectfully submits that the appropriate claim fees for this application have been paid. Applicant is entitled to a full and complete examination of each and every pending claim, including all features recited therein. If the Examiner cannot cite prior art taken alone or in proper combination, which would have produced the methods and apparatus of claims 6-8, 10,11, 18-20, 22-23 then it is

respectfully submitted that the Applicant is entitled to an allowance of their claims as a matter of law.

For at least the reasons set forth above, it is respectfully submitted that claims 6-8, 10, 11, 18-20, 22-23 are allowable. Allowance is earnestly solicited.

#### **IV. Provisionally Allowable Subject Matter**

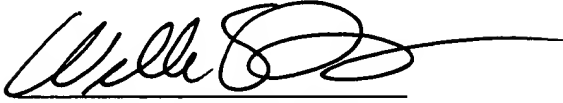
Applicant gratefully acknowledges the indication of allowability of the subject matter of claims 4 and 16

#### **V. Conclusion**

In view of the foregoing, applicant(s) respectfully request(s) that the Examiner withdraw the objection(s) and/or rejection(s) of record, allow all the pending claims, and find the application in condition for allowance. If any points remain in issue that may best be resolved through a personal or telephonic interview, the Examiner is respectfully requested to contact the undersigned at the telephone number listed below.

If necessary, the Commissioner is hereby authorized in this, concurrent, and further replies to charge payment or credit any overpayment to Deposit Account Number 50-0238 for any additional fees, including, but not limited to, the fees under 37 C.F.R. §1.16 or under 37 C.F.R. §1.17.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'William S. Francos', with a long horizontal line extending to the right.

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## **2. Amendments to the Drawings**

One sheet of drawings is attached including changes to Fig. 10. The sheet, which includes Figs. 10, replaces the original sheet including Fig. 10. Certain terms have been added to block elements indicative of the representation of the blocks.

Attachment: Replacement Sheet (1)